



U.S. DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2021-0045]

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/Office of the Immigration Detention Ombudsman-001 Office of the Immigration Detention Ombudsman System of Records.

AGENCY: Office of the Immigration Detention Ombudsman, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, “DHS/Office of the Immigration Detention Ombudsman (OIDO)-001 Office of the Immigration Detention Ombudsman System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the “DHS/Office of the Immigration Detention Ombudsman (OIDO)-001 Office of the Immigration Detention Ombudsman System of Records” from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Lynn Parker Dupree, (202) 343-1717, Privacy@hq.dhs.gov, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Homeland Security (DHS) Office of the Immigration Detention Ombudsman (OIDO) published a notice of proposed rulemaking in the Federal Register, 86 FR 49490 (September 3, 2021), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records. The DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records notice was published concurrently in the Federal Register, 86 FR 49553 (September 3, 2021), and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

OIDO is an independent office within DHS tasked with reviewing and resolving individual complaints and providing independent oversight of immigration detention facilities, including conducting announced and unannounced inspections, reviewing contract terms for immigration detention facilities and services, and making recommendations and reporting to Congress on findings. OIDO is creating this system of records to collect and maintain records related to individual complaints from or about individuals in immigration detention regarding potential violations of law, individual rights, standards of professional conduct, contract terms, or policy related to immigration detention by any officer or employee of CBP or ICE, or any contracted, subcontracted, or cooperating entity personnel.

Consistent with DHS's information sharing mission, information stored in the DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration,

intelligence, or other homeland security functions. In addition, DHS/OIDO may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Public Comments

DHS received zero comments on the Notice of Proposed Rulemaking and zero comments on the System of Records Notice. As such, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

PART 5--DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. §552a.

2. In appendix C to part 5, add paragraph 87 to read as follows”

Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act

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87. The DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws, and investigations, inquiries, and proceedings there under. The DHS/OIDO-001 Office of the Immigration Detention Ombudsman System of Records

contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), (k)(2), or (k)(5), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency.

Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an

investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities. Further, permitting amendment to law enforcement records after an investigation has been completed would impose an unmanageable administrative burden. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Lynn Parker Dupree,
Chief Privacy Officer,

U.S. Department of Homeland Security.

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